



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 332nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears
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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Third periodic report of Panama (CAT/C/34/Add.9)

1. At the invitation of the Chairperson, Mr. Saenz Fernandez, Mr. Kam and Mr. Bonagas (Panama) took places at the Committee table.
2. The CHAIRPERSON invited the Panamanian delegation to introduce the third periodic report of Panama (CAT/C/34/Add.9).
3. Mr. SAENZ FERNANDEZ (Panama), describing the main aspects of the Panamanian penal system that were relevant to the Convention, said that the definition of torture embodied in the Convention had been incorporated in the Panamanian legal system and included in articles 156 to 160 of the Penal Code. Panamanian law also followed the definition of torture contained in the Inter-American Convention to Prevent and Punish Torture of the Organization of American States. All legal decisions were required to take account of the definition of torture embodied in those instruments. Moreover, the Judicial Code prohibited the release on parole of any person convicted of an offence of torture or ill-treatment.
4. Article 21 of the Constitution provided that all legal requirements must be met in bringing legal proceedings and anyone subjecting a detainee to a prohibited act of cruelty was liable to dismissal and prosecution. Article 160 of the Penal Code provided for two to five years' imprisonment for public servants found guilty of torture or ill-treatment; a public servant who subjected a detainee to ill-treatment would be sentenced to between 6 and 20 months' imprisonment.
5. Article 22 of the Constitution provided that, a person suspected of having committed an offence had the right to be presumed innocent until proven guilty by the Attorney-General's Office. A person who was arrested must be informed of the reasons for his arrest in terms commensurate with his level of education and had the right to appoint a lawyer or to receive legal aid if he could not afford his own lawyer. Public servants could not carry out body searches without a warrant.
6. At the initiative of the Attorney-General's Office, all prisons had installed locked "prison letterboxes" to receive prisoners' complaints of human rights abuses. The letterboxes were opened every month in the presence of an official of the Attorney-General's Office and a representative of the Director of the prison, and the complaints examined. In addition, the Judicial Code specified that judges, magistrates and investigating officials should visit the prisons each month to report to the inmates on their cases, in terms they could understand, listen to complaints and suggestions and check on the physical conditions of their detention. The Judicial Code further provided that, from the time of their arrest, suspects had the right to appoint a lawyer who was not only responsible for defending them, but could also submit petitions, request evidence, lodge appeals, request copies of documents, etc.; the investigating authority was required to inform the

accused of the charges against him and of any evidence that linked him with the offence committed. The entire proceedings were rendered void if a public servant attempted to obtain from the accused, by means of physical, moral or psychological pressure, confessions or statements which implicated another person, and civil and criminal proceedings might be instituted against him. In addition, before being placed in pre-trial detention, the accused must be informed of the reasons for that measure and of the factual and circumstantial evidence against him.

7. Act No. 3 of 1991 had established less stringent precautionary measures in order to limit as far as possible the number of people held in pre-trial detention, including a ban on leaving Panama without authorization, the obligation to report regularly to a public authority, the obligation to reside within the corresponding jurisdiction and to inform the authorities of the place of residence, and the obligation on to remain confined at home or in a health establishment if committal to such an establishment was medically justified. Under that Act, a person could not be held in pre-trial detention for an alleged offence carrying a sentence of under two years' imprisonment, or if the accused was a woman who was either pregnant or breastfeeding, or a person over 65 years of age, a drug addict or an alcoholic undergoing treatment, in which case the authorities must verify that the accused was indeed undergoing such treatment. Judges endeavoured to impose the least stringent precautionary measure possible in the light of the circumstances surrounding the case, including the risk that the defendant might attempt to flee, destroy evidence or commit a violent act, and the seriousness of the alleged offence.

8. No one could be exempted from criminal responsibility for violating any principle embodied in the Constitution, even if he claimed to have acted under superior orders. The sole exception related to members of the police force, although, the Case Law of the Supreme Court of Justice had established that they could not commit a murder or other serious violation of human rights with the justification that they were acting on orders and must answer for their actions.

9. The Penal Code provided for the deferral of sentence in the event of serious illness or in the case of a woman who was pregnant or had recently given birth; in addition, if the convicted person suffered from a mental disorder or was unable to understand the nature and importance of the sentence imposed on him, it would be deferred until he had recovered. Pursuant to Act No. 19 of 1991, the Supreme Court's Third Administrative Litigation Division was responsible for proceedings relating to human rights violations and, specifically, acts of torture committed by public servants. For that purpose, it was not required that the injured person should have previously exhausted all administrative remedies.

10. Extradition applications relating to an offence, particularly one involving torture, should be submitted through the appropriate diplomatic channels to the Ministry of Foreign Affairs, which would ensure that all the conditions provided for in international law were met. Extradition was then granted, subject to compliance with certain requirements and provided specifically that the person in question would not incur the death penalty, torture or other cruel, inhuman or degrading treatment. A person whose

extradition had been requested could be held in detention for a period of 60 days during which all procedural guarantees were accorded. The person in question could bring a motion challenging the decision before the Criminal Division of the Supreme Court of Justice. If the extradition was granted, the requesting State had a period of 30 days in which to take the person sought into its charge. Paragraph 38 of the report provided detailed information on the rules for extradition in cases involving drug-related offences. The Panamanian Judicial Code provided that the State would of its own motion bring criminal proceedings against any foreigner in Panama who was sought in another country, including for acts committed in violation of the Convention; once the investigation had been completed, the State would either extradite that person to the country in question or initiate proceedings in Panama. Panamanian nationals could not be extradited.

11. The manner in which the prison system operated was also important in terms of the implementation of the Convention. Article 28 of the Constitution laid down the principle that the objective of the system was to rehabilitate and to re-integrate prisoners, who received individualized treatment from interdisciplinary teams composed of psychiatrists, social workers, and other professionals. It was intended to provide teaching and vocational training in all prison establishments and, under certain circumstances, prisoners were authorized to attend courses of study outside the prison. The Ministries for Trade and Industry and for Education, the United Nations, the UNDP and a Spanish institute had established a programme whereby prisoners underwent appropriate training and, subsequently, upon their release, received a subsidy to set up their own small enterprise. A centre also existed where women were helped to readjust upon their release and taught arts and crafts. Prisoners who worked were paid, part of their wage went to the prison, part was deposited in a savings account and part went to their family. Lastly, each prison had a human rights office, a legal consultation service and a legal aid service for prisoners.

12. Articles 336 to 342 of the Penal Code dealt with cases of abuse of authority, illegal deprivation of liberty, failure to comply with the procedures required by law, unduly prolonged detention, etc. Such provisions emphasized the responsibilities of the prison system, which was administered by the National Prisons Department. That body, which came under the Ministries of the Interior and of Justice, was responsible for ensuring compliance with the minimum rules laid down by the United Nations.

13. The principle of territoriality was governed by articles 7 to 12 of the Panamanian Penal Code. The competence of the Panamanian system of justice extended to any offence, and particularly torture, committed abroad by a Panamanian with diplomatic immunity or where the injured party was a Panamanian national and offences committed by a foreigner who was in Panama. Acts of torture were among the offences that were automatically prosecuted. The principle of territoriality also applied, where necessary, to persons in respect of whom extradition had been refused on the grounds that they were being prosecuted for political offences.

14. Members of the national police were prohibited from employing torture or excessive force that might cause death, except in exceptional cases where their own lives or that of a person they were required to protect was at risk.

The same prohibition applied to officers of the Criminal Investigation Service, a subsidiary organ of the Attorney-General's Office which conducted the preliminary stage of the investigation; it was likewise prohibited for the members of either police body or of any other authority to invoke exceptional circumstances, such as a state of war or a state of emergency as justification for torture or other cruel, inhuman or degrading treatment. Capital punishment did not exist. All members of prison staff underwent a rigorous selection process before they were recruited and subsequently received regular human rights training. In 1997, the University of Panama had introduced a special five-semester course for prison warders. The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders also organized courses in various countries of the region. Article 41 of the Constitution upheld the right of every person to submit complaints against the authorities, if a response was not forthcoming within 30 days, disciplinary or criminal proceedings would be instituted against the public servant involved. In certain cases, failure to respond to the complaint meant that it was considered admissible.

15. In connection with article 14 of the Convention, articles 119 to 130 of the Penal Code established the civil liability of any person guilty of an offence. Civil liability remained even if the person who had committed the offence was deemed incapable or if his sentence had been commuted or pardoned; it did not cease once the sentence had been served and was transmitted to the heirs of the person found guilty of the offence. A bill provided that the victim could participate in the criminal proceedings with full rights, including the right to appoint a lawyer, to submit evidence, to be informed of the procedural documents and, where necessary, to receive a prompt examination or medical treatment. That text was an important landmark in judicial procedure.

16. With regard to article 15 of the Convention, article 2120 of the Judicial Code prohibited any measure or promise, coercion or threat in order to secure a statement from the accused, the victim or a witness. Article 769 of the Judicial Code categorized as inadmissible any evidence that had been obtained through torture or the violation of human rights or was contrary to morality or public order. One important development since the previous report was that the overpopulated Modelo prison had been demolished; the warders who had subjected inmates to acts of torture and ill-treatment had been duly tried and sentenced; as was their right, they had appealed against the judgement. New prisons had been constructed with a view to improving prison conditions. A law had been enacted in December 1997 which contained a series of provisions to fill the existing judicial vacuum in connection with pre-trial detention; it provided that the duration of pre-trial detention could not exceed the minimum sentence corresponding to the offence. Even if the other side appealed against the acquittal of a person in pre-trial detention, the latter must be released. That provision applied likewise to the alleged perpetrators of offences such as drug trafficking or money laundering, whose release, might, however, be subject to conditional bail. If the suspect showed signs of mental disorder during pre-trial detention, he should be released and treated. Another recent development was the introduction of a regulation authorizing marital visits to prisoners, the arrangements for which were made by each establishment. There were no political prisoners in Panama. A programme of paid work had been introduced in prisons, details of which had

already been given. Competitions were held to select candidates for posts in the judicial system, in order to guarantee their independence, and the successful candidates underwent a probationary training period of six months. Another positive development was that the school offering judicial studies had been expanded and a school offering prison-related studies had been established within the Ministry of Justice to monitor compliance with international conventions and provisions. A bill had been drafted, with the assistance of a United Nations technical assistance programme, to restructure the prison system, which would become an entirely autonomous institution; all appropriate measures would be taken to ensure that rules regarding the treatment of prisoners were observed. Lastly, prisons were being computerized.

17. The CHAIRPERSON thanked the Panamanian delegation for its detailed introduction.

18. Mr. GONZALEZ POBLETE (Country Rapporteur) also thanked Mr. Saenz Fernandez for his introduction and said that dialogue was facilitated by the fact that he had previously represented his country in introducing earlier reports to the Committee. Following its ratification in August 1987, the Convention had entered into force in September 1987 and Panama had not made any declarations in connection with articles 20 and 22. Panama was also party to the Inter-American Convention to Prevent and Punish Torture.

19. The third periodic report of Panama, which had been due in 1996, had been received in the spring of 1997 and it had been purely owing to reasons of organization, and certainly not to lack of interest, that the Committee had not been able to consider it during its autumn 1997 session. Unlike the initial report, the second periodic report had adhered strictly to the Committee's guidelines. The third periodic report was structured in the same way as the second report and some paragraphs had been directly transposed. It would no doubt have been easier both for the authors of the report and for the Committee if the third report had been confined to new developments and simply referred back to the second periodic report where there had been no change.

20. During the consideration of the second periodic report, the representative of Panama had said that the definition of torture contained in the Convention, and indeed the Convention as a whole, had been duly incorporated into domestic legislation. Nonetheless, in the revised core document (HRI/CORE/1/Add.14/Rev.1), it was stated in paragraph 102 that the international human rights provisions contained in conventions, treaties and declarations of principles were incorporated into the national legal system by means of an act which showed that they had been adopted by the Legislative Assembly; and paragraph 103 stated that, under Panama's Constitution and laws, the provisions of international human rights instruments might be invoked before the law courts or the administrative authorities only after they had been incorporated into internal law through approval by the Legislative Assembly. It therefore appeared that the process of incorporating the provisions of the Convention involved two steps, and that meant that article 1 had not in fact been incorporated into domestic legislation. The Committee would like that point to be clarified.

21. The situation with regard to the hierarchy of provisions in the national legal system was not clear. In that connection, the Constitution stated only that the Convention was a fundamental law and not an ordinary law. Did the distinction between a fundamental law and an ordinary law relate only to procedural matters or did it have a bearing on the hierarchy of provisions?

22. In respect of article 2, paragraph 1, of the Convention, he requested further details on paragraph 5 as it related to paragraph 6 of the third periodic report. The prohibition on holding detainees incommunicado, if it was indeed applied strictly and without exception, was highly commendable since incommunicado detention was conducive to the commission of acts of torture. The fact that judges, magistrates and investigating authorities were required to visit prisons monthly was also a welcome measure.

23. Article 2, paragraph 3, of the Convention was reflected in article 34 of the Panamanian Constitution, which embodied the general principle that a person who had committed a manifest violation of a constitutional or legal provision to the detriment of another person could not be exempted from responsibility on the grounds that he had acted under orders from a superior. Nonetheless, an exception was made for members of the police force, in which case the hierarchical superior who had given the order was solely responsible. That provision appeared to contradict not only the Convention, but also the fact that officers of the Criminal Investigation Service were disqualified from invoking orders from a superior to exempt them from responsibility.

24. Paragraph 29 (k) of the report which related to article 3 of the Convention, indicated that extradition would not be granted when the executive branch so decided, stating its reasons. That was no doubt a positive point, since it allowed judicial proceedings to be counterbalanced by a decision of the executive; the Committee wondered whether the Panamanian authorities had ever had occasion to implement that provision. It was also regrettable that the report provided no information on legal or administrative provisions or on Panama's refugee and asylum policy. He asked the delegation to provide clarifications on the forced repatriation, in November 1996, of 88 Colombian refugees, which might well create a regrettable precedent for all Colombian refugees in Panama.

25. Paragraph 41 of the report stated that articles 156 and 160 of the Penal Code qualified as an offence any act carried out by a public servant that subjected a detainee to any act violating human rights, the penalties for which ranged from six months' to five years' imprisonment, depending on the nature of the offence committed and the category of the crime involved. It might be asked whether a term of five years' imprisonment was truly proportional to the gravity of some of the acts in question, particularly as paragraph 29 of the second periodic report referred to prison terms of up to 15 years for the same acts.

26. Paragraph 43 of the third periodic report stated that article 2181 (5) of the Judicial Code did not permit bail to be granted to persons accused of offences against individual freedom, accompanied by torture, degrading punishment or harassment. Was that measure intended to strengthen the criminal law provision against torture?

27. Lastly, with regard to article 8 of the Convention, paragraph 38 of the second periodic report stated that the act of torture, which was listed as a punishable offence under Panamanian legislation, was among those for which a person could be extradited from the Republic of Panama. It would therefore appear that extradition agreements had been concluded and the Committee would like to know whether the Panamanian authorities had received extradition applications for offences covered by article 4 of the Convention.

28. Mr. SILVA HENRIQUES GASPAR welcomed the fact that no act of torture or ill-treatment had been recorded in Panama, as well as the information provided on training courses organized for prison warders. The bill that had been drafted on the participation of victims in criminal proceedings, reflecting article 14 of the Convention, was also to be welcomed.

29. With regard to article 12 of the Convention, paragraph 68 of the report stated that competent officials from the judiciary and the Attorney-General's Office were required to carry out monthly visits to prison institutions in order to provide all inmates with detailed information on the status of their cases. The Committee wished to know whether those visits were made during the course of the inquiry or when the sentence was being served. Did a judge responsible for the enforcement of sentences ever intervene? He also asked whether the amnesty law had already entered into force, since the Committee was always concerned that amnesty laws might be incompatible with the obligations deriving from article 12 of the Convention.

30. Lastly, he requested clarifications on the incidents which had occurred in 1995, during which it appeared that the police had opened fire on demonstrators, killing four persons.

31. MR. SORENSEN said that only paragraphs 61 and 62 of the report related to article 10 of the Convention, since paragraphs 57, 58 and 59 in fact related to other articles. He asked whether the prohibition on torture was a subject in its own right in the training organized for prison staff. Were similar courses held for the police and what training was given to doctors?

32. The Committee always scrutinized statistics on the prison population particularly closely. During his visit to Panama in 1996, he had been surprised to learn that 90 per cent of prisoners were in pre-trial detention, while only 10 per cent had been tried and convicted. What were the present figures? The Committee had been very favourably impressed during its consideration of the initial report of Panama by the provision which required the judge to justify the need to place a suspect in pre-trial detention. Was that requirement still valid?

33. He welcomed the bill which provided for the release of a person whose period in pre-trial detention had exceeded the corresponding maximum sentence. Was the release decision taken by the governor of the prison or by a judge? Were the education and job programmes organized in prisons open only to convicted prisoners or also to persons being held in pre-trial detention?

34. He invited the Panamanian delegation, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights and the United Nations International Day in Support of Victims of Torture (26 June),

to recognize the competence of the Committee under articles 21 and 22 of the Convention and to make a contribution, albeit symbolic, to the United Nations Voluntary Fund for Victims of Torture.

35. MR. EL MASRY said that he was concerned to read in paragraph 100 of the core document (HRI/CORE/1/Add.14/Rev.1) that, in the event of foreign war or internal disturbance that threatened peace and public order, all or part of the effects of certain articles of the Constitution might be temporarily suspended. Since article 28, which prohibited torture, was among those cited, he would welcome further information, since that would appear to be contrary to article 2, paragraph 2 of the Convention.

36. MR. YU Minjia asked whether the State was responsible for paying compensation to a victim of acts of torture when the guilty party was insolvent or had acted either on superior orders or in the exercise of his duties.

37. The CHAIRPERSON thanked the members of the Panamanian delegation for their attention and invited them to answer the Committee's questions at the following meeting.

38. The Panamanian delegation withdrew.

The public part of the meeting rose at noon.